MBf Leasing Sdn Bhd v Cheok Lai Chen

HIGH COURT (MELAKA) — CIVIL APPEAL NO 12–55 OF 2000
LOW HOP BING J
18 JUNE 2003

Bills of Sale *— Definition — Hire purchase agreement — Whether bill of sale — Plaintiff issued letter of offer for hire purchase facility to first defendant prior to payment of deposit by first defendant to dealer in respect of excavator — Whether plaintiff was a stranger to transaction between first defendant and dealer — Whether first defendant had been vested with ownership or title of excavator — Whether agreement between plaintiff and first defendant was a mere device to cloak a loan — Whether agreement executed between plaintiff and first defendant was a bill of sale under the Bills of Sale Act 1950*

Hire Purchase *— Hire purchase agreement — Allegation that the agreement was void — Plaintiff issued letter of offer for hire purchase facility to first defendant prior to payment of deposit by first defendant to dealer in respect of excavator — Whether plaintiff was a stranger to transaction between first defendant and dealer — Whether first defendant had been vested with ownership or title of excavator — Whether agreement between plaintiff and first defendant was a mere device to cloak a loan — Whether agreement executed between plaintiff and first defendant was a bill of sale under the Bills of Sale Act 1950*

The first defendant applied to the plaintiff for a hire purchase facility of RM196,000 which was approved by the plaintiff vide its letter dated 4 March 1997 to the first defendant ('the letter of offer'). The first defendant accepted the letter of offer. The subject matter of the agreement was one unit of reconditioned Hitachi excavator valued at RM245,000. On 15 March 1998, the first defendant made a down payment of RM49,000 to the dealer, Auto Link Holdings Sdn Bhd ('the dealer') and the balance of the purchase price was to be settled via the hire purchase facility given by the plaintiff. A hire purchase agreement dated 24 March 1997 was executed by the plaintiff and the first defendant ('the said agreement') and under the terms of the said agreement, the hire purchase facility was repayable over a period of 36 months. The second defendant was the guarantor. The first defendant was unable to satisfactorily service the installments and consequently, the plaintiff brought an action against the defendants at the sessions court. The sessions court judge dismissed the plaintiff's action on the ground that the agreement was not a hire purchase transaction. Hence the instant appeal by the plaintiff. By consent of the counsel for the parties herein, the question for determination in this appeal was: 'whether the hire purchase agreement dated 24 March 1997 executed between the plaintiff and the first defendant was a bill of sale under the Bills of Sale Act 1950'. The parties had agreed that if the answer to this question was in the affirmative, the plaintiff's claim must fail. Conversely, the plaintiff's claim must succeed if the answer was in the negative.

Held, answering the question in the negative and allowing the plaintiff's appeal:

(1) Prior to the payment by the first defendant of the deposit of RM49,000 on 15 March 1997, the plaintiff was not a stranger to the transaction between the first defendant and the dealer in respect of the excavator because on 4 March 1997, there was already a letter of offer containing all the terms of a hire purchase agreement which had been accepted in toto by the first defendant, and which had been formalized in the said agreement. Further, the payment of the deposit by the first defendant in respect of the excavator was subject to the terms and conditions of the said agreement. That being the case, the first defendant could not be said to have been vested with the ownership or title of the excavator. The first defendant's payment of RM49,000 to the dealer was a mere agreement for sale, that is, an executory contract of sale, and so title or ownership in the excavator was not to pass to the first defendant until satisfactory agreement had been made for the payment of the balance of the purchase price (see pp 336D–F, 337C–D); *Low Ping Ming (t/a Low Peng Enterprise) v MBf Finance Bhd* [1999] MLJU 664; [2000] 2 CLJ 307 and *BSNC Leasing Sdn Bhd v Sabah Shipyard Sdn Bhd & Ors* [2000] 2 MLJ 70 distinguished; *Malayan Credit Ltd v Mohamed Kassim* [1965] 2 MLJ 134 followed.

(2) The plaintiff and the first defendant had from 4 March 1997 agreed to the terms of the hire purchase arrangement and so the agreement was not a mere device to cloak a loan. Further, it seemed clear that the documents executed by the parties were reflections of their true nature and there was nothing behind them to the contrary (see p 339A–B); *Kan Yeow Wing v Keng Soon Motor Finance Co* [1962] 28 MLJ 391 distinguished.

(3) Parliament in its wisdom had provided for a comprehensive definition of a bill of sale in s 3 of the Bills of Sale Act 1950. However, counsel for the defendants had not identified the particular portion of the definition of a 'bill of sale' which would apply to the facts of the present case. The burden was on the defendants to establish that the facts of the case herein attracted the application of the specific definition of a bill of sale so to render the transaction void, but the defendants had failed to do so (see pp 339B, I, 340A).

(4) Accordingly, the said agreement was a genuine hire purchase agreement and the answer to the question for consideration in this appeal was in the negative. Therefore, the plaintiff's claim must succeed (see p 340A).

[Bahasa Malaysia summary

Defendan pertama telah memohon kepada plaintif untuk kemudahan sewa beli berjumlah RM196,000 yang telah diluluskan oleh plaintif melalui suratnya bertarikh 4 Mac 1997 kepada defendan pertama ('surat tawaran tersebut'). Defendan pertama telah menerima surat

tawaran tersebut. Perkara pokok perjanjian adalah mengenai satu unit mesin pengorek Hitachi yang telah diperbaiki bernilai RM245,000. Pada 15 Mac 1998, defendan pertama telah membuat bayaran pendahuluan sebanyak RM49,000 kepada peniaga, Auto Link Holdings Sdn Bhd ('peniaga tersebut') dan baki harga belian hendaklah diselesaikan melalui kemudahan sewa beli yang diberikan oleh plaintif. Satu perjanjian sewa beli bertarikh 24 March 1997 telah disempurnakan oleh plaintif dan defendan pertama ('perjanjian tersebut') dan di bawah terma-terma perjanjian tersebut, kemudahan sewa beli perlu dibayar balik dalam tempoh 36 bulan. Defendan kedua adalah penjamin. Defendan pertama tidak dapat memberikan perkhidmatan yang memuaskan terhadap bayaran ansuran tersebut dan akibatnya, plaintif telah memulakan satu tindakan terhadap defendan-defendan di mahkamah sesyen. Hakim mahkamah sesyen telah menolak tindakan plaintif atas alasan bahawa perjanjian tersebut bukan satu transaksi sewa beli. Justeru itu, rayuan ini dibuat oleh plaintif. Melalui persetujuan peguam bagi pihak-pihak berikut, persoalan untuk ditentukan dalam rayuan ini adalah: 'whether the hire purchase agreement dated 24 March 1997 executed between the plaintiff and the first defendant was a bill of sale under the Bills of Sale Act 1950'. Pihak-pihak bersetuju bahawa jika jawapan adalah positif, tuntutan plaintif harus gagal. Sebaliknya, tuntutan plaintif harus berjaya jika jawapannya adalah negatif.

Diputuskan, menjawab soalan secara negatif dan membenarkan rayuan plaintif:

(1) Sebelum pembayaran deposit oleh defendan pertama sebanyak RM49,000 pada 15 Mac 1997, plaintif bukan orang baru kepada transaksi antara defendan pertama dan peniaga tersebut berhubung mesin pengorek tersebut kerana pada 4 Mac 1997, sudahpun ada surat tawaran yang mengandungi semua terma-terma satu perjanjian sewa beli yang telah diterima in toto oleh defendan pertama, dan telah dibuat secara formal ke dalam perjanjian tersebut. Tambahan pula, bayaran deposit oleh defendan pertama berhubung mesin pengorek tersebut tertakluk kepada terma-terma dan syarat-syarat perjanjian tersebut. Sekiranya begitu kesnya, defendan pertama tidak boleh dikatakan telah diberikan pemunyaan atau hakmilik ke atas mesin pengorek tersebut. Bayaran defendan pertama sebanyak RM49,000 kepada peniaga tersebut hanya satu perjanjian jualan, iaitu, satu kontrak jualan eksekutori, dan oleh itu hak milik atau pemunyaan ke atas mesin pengorek tersebut tidak berpindah kepada defendan pertama sehingga perjanjian yang memuaskan telah dibuat untuk bayaran baki harga belian tersebut (lihat ms 336D–F, 337C–D); *Low Ping Ming (t/a Low Peng Enterprise) v MBf Finance Bhd* [1999] MLJU 664; [2000] 2 CLJ 307 dan *BSNC Leasing Sdn Bhd v Sabah Shipyard Sdn Bhd & Ors* [2000] 2 MLJ 70 dibeza; *Malayan Credit Ltd v Mohamed Kassim* [1965] 2 MLJ 134 diikut.

(2) Plaintiff dan defendan pertama telah dari 4 Mac 1997 bersetuju kepada terma-terma kepada pengurusan sewa beli dan oleh itu perjanjian tersebut bukan hanya satu devis untuk mendapat satu pinjaman. Tambahan pula, ia adalah jelas bahawa dokumen-dokumen yang disempurnakan oleh pihak-pihak adalah bayangan sifat sebenar mereka dan tiada apa-apa sebaliknya (lihat ms 339A–B); *Kan Yeow Wing v Keng Soon Motor Finance Co* [1962] 28 MLJ 391 dibeza.

(3) Parlimen dengan kewajarannya telah memperuntukkan satu tafsiran yang komprehensif mengenai satu bil jualan dalam s 3 Akta Bil Jualan 1950. Namun begitu, peguam bagi pihak defendan-defendan tidak mengenalpasti bahagian tertentu tafsiran satu 'bill of sale' yang akan terpakai kepada fakta-fakta kes semasa. Beban atas defendan-defendan adalah untuk membuktikan bahawa fakta-fakta kes di sini memberikan permohonan satu tafsiran yang spesifik untuk satu bil jualan yang akan menjadikan transaksi tersebut terbatal, tetapi defendan-defendan (lihat ms 339B, I, 340A).

(4) Sewajarnya, perjanjian tersebut adalah satu perjanjian sewa beli yang asli dan jawapan kepada persoalan untuk ditentukan dalam rayuan ini adalah negatif. Oleh itu, tuntutan plaintif harus berjaya (lihat ms 340A).]

Notes

For cases on allegations that the hire purchase agreement was void, see 7(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 3634–3635.

For cases on the definition of hire purchase agreements, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2867–2872.

Cases referred to

BSNC Leasing Sdn Bhd v Sabah Shipyard Sdn Bhd & Ors [2000] 2 MLJ 70 (distd)

Kan Yeow Wing v Keng Soon Motor Finance Co [1962] MLJ 391 (folld)

Low Ping Ming (t/a Low Peng Enterprise) v MBf Finance Bhd [1999] MLJU 664; [2000] 2 CLJ 307 (distd)

Malayan Credit Ltd v Mohamed Kassim [1965] 2 MLJ 134 (folld)

North Central Finance Co Ltd v Brailsford & Anor [1962] 1 All ER 502 (refd)

Legislation referred to

Bills of Sale Act 1950 s 3

Sale of Goods Act 1957 ss 4, 19(1), 20

Appeal from: Summons No 52–276 of 1999 (Sessions Court, Melaka)

TT Leong (*Tunku Amiruddin & KK Chew*) for the plaintiff. A
Nizam Bashir (*Bashir & Co*) for the defendants.

Low Hop Bing J:

Appeal B

This is an appeal by the appellant plaintiff ('the plaintiff') against the decision of the learned sessions court judge who on 6 September 2006 dismissed the plaintiff's claim against the defendants in the sum of RM126,470.04 and costs.

By consent of the respective learned counsel for the parties herein, the question for determination has been stated by them as follows: C

> Whether the hire purchase agreement dated 24 March 1997 executed between the plaintiff and the first defendant ('the agreement') is a bill of sale under the Bills of Sale Act 1950?

They have also agreed that if the answer to this question is in the affirmative, the plaintiff's claim must fail. Conversely, the plaintiff's claim must succeed if the answer is in the negative. D

Uncontroverted facts

The uncontroverted facts of this case reveal that the agreement began with the words 'This Hire Purchase Agreement'. E

The second defendant executed a document entitled 'Guarantee on Hire Purchase Agreement' in favour of the plaintiff in consideration of the plaintiff and the first defendant entering into the agreement at the second defendant's request. The second defendant has guaranteed 'the due and punctual payment of all sums which may become due to you under or arising out of the said Hire Purchase Agreement and the due performance of the Hirer of each and every term and condition in the said Hire Purchase Agreement to be performed and observed by the Hirer'. F

The prelude to the agreement was the first defendant's application to the plaintiff for hire purchase facility of RM196,000 which was approved by the plaintiff's letter dated 4 March 1997 to the first defendant, wherein detailed terms and conditions were expressly stated in four typewritten pages. The first defendant has accepted these terms and conditions *in toto*. G

The subject matter of the agreement was one unit of reconditioned Hitachi excavator valued at RM245,000. On 15 March 1998, the first defendant made a down payment of RM49,000 to the dealer Auto Link Holdings Sdn Bhd and the balance was to be settled by the first defendant by the hire purchase facility given by the plaintiff and that facility was repayable in 36 months at RM6,703 per month for 35 months commencing on 24 April 1997 and the 36th instalment at RM6,671. H

The first defendant was unable to satisfactorily service the installments. As at 24 June 1998, pursuant to the agreement, the first defendant has paid only 11 installments amounting to RM73,733. At the first defendant's I

request, the plaintiff and the first defendant executed a supplemental agreement to the 'Hire Purchase Agreement' whereby the installments were rescheduled for payment over a period of 48 months at RM4,587 per month, commencing on 24 June 1998. Notwithstanding that, the first defendant failed to perform the terms of the supplemental agreement.

Counsel's submissions and decision on appeal

Cik TT Leong, learned counsel for the plaintiff, submitted that the first defendant's payment of the deposit sum RM49,000 to the dealer Auto Link Holdings Sdn Bhd on 15 March 1997 did not constitute a contract of sale, and even if there had been a contract of sale, it had been superseded by the hire purchase agreement and the supplementary agreement executed between the plaintiff and the first defendant.

En Nizam Bashir, learned counsel for the defendants, contended that the issue for determination by the court is whether the agreement is a real and true hire purchase agreement and he answered it in the negative as the ownership of the excavator has passed to the first defendant when the deposit was paid by the first defendant to Auto Link Holdings Sdn Bhd on 15 March 1997.

The respondent relied on the following authorities:

(1) *BSNC Leasing Sdn Bhd v Sabah Shipyard Sdn Bhd & Ors* [2000] 2 MLJ 70 (CA);

(2) *Low Ping Ming (t/a Low Peng Enterprise) v MBf Finance Bhd* [1999] MLJU 664; [2000] 2 CLJ 307;

(3) *MBF Finance Bhd v Cahaya Luas Sdn Bhd & Ors* [2002] 5 CLJ 32;

(4) *Kan Yeow Wing v Keng Soon Motor Finance Co* [1962] MLJ 391;

(5) s 3 of the Bills of Sale Act 1950.

The learned sessions court judge stated in his grounds of judgment that the first defendant did not deny executing the agreement to finance the transaction therein and the outstanding sum. His sole ground for dismissing the plaintiff's claim is that the agreement is not a hire purchase transaction on the basis of *Low Ping Ming*. There was no finding by the court below as to whether the agreement is a bill of sale.

In my judgment, it must be observed that the plaintiff's application in *Low Ping Ming* was by way of originating summons and the facts revealed that the plaintiff had applied for a loan from the defendant to finance the purchase of a machine and which loan was approved by the defendant upon the plaintiff entering into a hire purchase agreement with the defendant. The plaintiff had failed to pay the instalments in accordance with the hire purchase agreement. As a result, the defendant took possession of the machine. The plaintiff intended to purchase the machine from one Avian Engineering Malaysia Sdn Bhd (the dealer) apparently for an agreed price of RM196,326, and made initial payments amounting to RM35,000 after which the machine was delivered to him on 15 November 1996. The plaintiff thereafter approached the defendant for the loan to settle the balance of the purchase price to the dealer.

Steve Shim J (as he then was) held as follows:

> Given the factual scenario above, two factors have clearly emerged: (1) that at the material time of the transaction between the plaintiff and the dealer in respect of the purchase of the said CAR 5886, the defendant was a stranger as the said agreement only came into existence on 23 December 1996; (2) that at the time of the execution of the said agreement on 23 December 1996, the title to the said CAR 5886 and therefore its ownership would have been vested in the plaintiff since the plaintiff had, as I have said, made the initial payment as part-payment of the purchase to the dealer on 21 October 1996 and 4 November 1996 respectively and had also taken delivery of the same on 15 November 1996. That being the position, the defendant would have no title or ownership in the said CAR 5886 at the time when the said agreement was executed on 23 December 1996 nor was there any consideration for the option to purchase by the plaintiff at the material time. In the absence of such an essential characteristic or feature, the said agreement could not be regarded as a real hire purchase agreement.

The learned judge made it clear in the judgment that the central thrust of the plaintiff's application is directed entirely at the validity of the hire purchase agreement.

In the instant appeal, the facts were that prior to the payment by the first defendant of the deposit of RM49,000 on 15 March 1997, the plaintiff was not a stranger to the transaction between the plaintiff and Auto Link Holdings Sdn Bhd in respect of the excavator, because as alluded to above, on 4 March 1997, there was already a letter of offer containing all the terms of a hire purchase agreement which had been accepted in toto by the first defendant, and which had been formalized in the agreement.

Further, the payment of the said deposit by the first defendant in respect of the excavator was subject to the terms and conditions of the agreement. That being the case, I am of the view that the first defendant could not be said to have been vested with the ownership or title of the excavator.

The facts in the instant appeal are clearly distinguishable from those in *Low Ping Ming*. The facts in the instant appeal bear a remarkable resemblance with those in *Malayan Credit Ltd v Mohamed Kassim* [1965] 2 MLJ 134, where the defendant entered into a hire purchase agreement with the plaintiffs on 28 August 1963 whereby the defendant agreed to hire a motor car from the plaintiff. On the same date, the defendant took delivery of the motor car, as the defendant had paid a booking deposit of RM100 to the dealer Universal Cars Ltd on 27 August 1963. Upon being sued by the plaintiff for default in payment under the agreement, the defendant pleaded that at all material times he was the sole owner of the motor car and that the agreement was a bill of sale within the meaning of the then Bills of Sale Ordinance (now Act) 1950.

Hepworth J held as follows at p 135:

> It was in my opinion as I have said an agreement for sale and it was clear from what happened that the intention was that the property in the said motorcar was not to pass until satisfactory arrangements had been made for the payment of the balance of the purchase price.

> The term 'contract of sale' includes both actual sales and agreements for sale. It is important to distinguish clearly between the two classes of contract. An agreement to sell, or, as it is often called, an executors contract of sale, is a contract pure and simple; whereas a sale, or, as it is called for distinction, an executed contract of sale is a contract plus a conveyance. By an agreement to sell *a jus in personam* is created, by a sale a *jus in rem* also is transferred.
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> ...
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> In other words, although there was an agreement between Universal Cars Ltd and himself for the sale of the said motor-car to him the property in the said motor-car had not then passed to him, and he agreed that instead of the completion of the sale to him the said motor-car should be sold to the plaintiffs on the understanding that they would enter into a hire purchase agreement with him.
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> In these circumstances the agreement is not a bill of sale.

(see also s 4 of the Sale of Goods Act 1957)

I am inclined to the above view of Hepworth J and hereby apply it to the instant appeal, in which case, I hold that the first defendant's payment of RM49,000 to Auto Link Holdings Sdn Bhd is a mere agreement for sale ie an executory contract of sale, and so title or ownership in the excavator was not to pass to the first defendant until satisfactory agreements had been made for the payment of the balance of the purchase price. Section 19(1) of the Sale of Goods Act 1957 provides that the conduct of the parties viz the first defendant and the vendor Auto Link Holdings Sdn Bhd and the circumstances of the case are important for the purposes of ascertaining their intention.

In *BSNC Leasing Sdn Bhd*, one of the issues before the Court of Appeal was whether the property in the turbine which was the subject matter of a hire purchase agreement had ever passed to BSNC Leasing. There, Sabah Shipyard entered into a contract with Wing Teik to purchase, the turbine. That contract was made sometime in June 1995 for the turbine to be delivered and paid for later. Wing Teik and Sabah Shipyard did not express any intention as to when property in the turbine will pass from the one to the other. Neither is there any form of conduct or circumstances from which such intention is to be deduced. The Court of Appeal held that the property in the turbine passed from Wing Teik to Sabah Shipyard, after having applied s 20 of the Sale of Goods Act 1957 which reads:

> Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price, or the time of delivery of the goods, or both, is postponed.

The Court of Appeal held that there was not a shred of evidence to show that the turbine had been sold to BSNC Leasing at any point of time before the execution of the hire purchase agreement which the Court of Appeal declared as an unregistered bill of sale and not being in the statutory form was non-registrable and void, in which case BSNC was refused leave to repossess the turbine. The facts in that case are similar to those in *Low Ming Ping* but not in the instant appeal.

In *Kan Yeow Ming*, the question was whether certain agreements manifestly for the hire purchase of motor vehicles should be declared void for non-registration as bills of sale under the Bills of Sale Ordinance (now Act) 1950. The facts of that case show that the plaintiff was pressed by pawnbrokers, his creditors and sold five lorries to the defendant and simultaneously entered into hire purchase agreements in respect of the lorries.

The plaintiff defaulted in the payment of his monthly instalments and upon demand from the defendant, prayed for a declaration that the said hire purchase agreements were void bills of sale.

Ong J (later CJ(M) followed the judgment of Cairns J in *North Central Finance Co Ltd v Brailsford & Anor* [1962] 1 All ER 502 and enunciated the principles applicable in determining whether a hire purchase agreement is a bill of sale and void for registration as follows:

(i) if a person deliberately, with a clear understanding of what he is doing, and with all appropriate formalities, sells his property to a finance company and then hires it back under a hire purchase agreement, the agreement is not a bill of sale (*Yorkshire Railway Wagon Co v Maclure* [1882] 21 Ch D 309), a decision of the Court of Appeal; and *British Railway Traffic & Electric Co v Kahn* [1921] WN 52, a decision of Rowlatt J;

(ii) if the purpose of the transaction is to enable the hirer to dispose of the property to a customer, the courts will more readily hold that the agreement is not a bill of sale (*Staffs Motor Guarantee Ltd v British Wagon Co Ltd* [1934] 2 KB 305, a decision of MacKinnon J);

(iii) if the hire purchase agreement is a mere device to cloak a loan, the document is a bill of sale (Maclure's case, per Lindley LJ);

(iv) in considering whether the real transaction is one of loan, it is necessary to look behind the documents to discover its true nature (*Polsky v S & A Services, S & A Services v Polsky* [1951] 1 All ER 185), a judgment of Lord Goddard CJ affirmed by the Court of Appeal;

(v) if the facts are not truly stated in the documents, there is a circumstance tending to show that the documents are a mere cloak (*Polsky*'s case).

The learned judge held at p 393 that:

> The fixing of unrealistic prices having no relation to the true values of the vehicles, and the notional setting off of the initial payments therefore makes the conclusion inevitable, that the prices and initial payments were tailored to suit the plaintiff's requirements for adequate cash accommodation to repay the pawnbrokers, in other words, to substitute one creditor for another and that the true purchase agreements were not a mirror of the truth.
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> I accordingly find that the transaction was one of loan on security rather than a genuine sale and reletting on hire purchase. The plaintiff accordingly succeeds, and he is entitled to both the declarations prayed, because there was non-registration under the Bills of Sale Ordinance and no memorandum of the contract of loan as required by s 16 of the Moneylenders Ordinance. The defence of estoppel cannot arise and the counterclaim for arrears of hire likewise fails.

A The facts in that case were somewhat dissimilar from those in the instant appeal where the plaintiff and the first defendant had from 4 March 1997 agreed to the terms of the hire purchase arrangement and so the agreement was not a mere device to cloak a loan, as in para (iii) above. Further, it seems clear to me that the documents executed by the parties herein were reflections of their true nature and there was nothing behind them to the B contrary.

Parliament in its wisdom has provided for a comprehensive definition of a bill of sale in s 3 of the Bills of Sale Act 1950 as follows:

> 'bill of sale' includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts C for purchase money of goods, and other assurances of personal chattels, and also powers of attorney, authorities or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels or to any charge or security thereon is conferred, but does not include the following documents —
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> D (a) assignments for the benefit of the creditors of the person making or giving the same;
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> (b) ante-nuptial marriage settlements;
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> (c) transfers or assignments of any ship or vessel or share thereof;
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> (d) transfers of goods in the ordinary course of business of any trade or E calling;
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> (e) bills of sale of goods in foreign ports or at sea;
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> (f) bills of lading, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods or authorizing or F purporting to authorize, either by endorsement or by delivery, the possessor of such documents to transfer or receive goods thereby represented;
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> 'bill of sale' also includes, as regards any personal chattels which may be seized or taken thereunder, every attornment, instrument or agreement whereby a power of distress is given or agreed to be given by any person to G any other person by way of security for any debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance or otherwise for the purpose of such security only, but does not include or extend to any mortgage or charge of any estate or interest in any land which the mortgagee or chargee being in possession demises to the mortgagor or chargor as his tenant at a fair and H reasonable rent;
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> 'bill of sale' also includes agreements for the hire of personal chattels entered into for the purpose of securing the repayment to the lessor of such chattels of money advanced by him to the hirer; and the hirer shall in every such case be deemed to be the grantor of the bill of sale and the lessor shall be deemed to be the grantee thereof;

I Learned counsel for the defendants have not identified which particular portion of the above definitions of a 'bill of sale' would apply to the facts of the present case.

The burden is on the defendants to establish that the facts of the case herein would attract the application of the specific definition of a bill of sale to render the transaction void, but the defendants have failed to do so.

Accordingly, I hold that the agreement is a genuine hire purchase agreement and hence the answer to the question for consideration in this appeal is in the negative, in which case the plaintiff's claim must succeed. I therefore allow this appeal with costs, set aside the said order of the lower court, and make an order in terms of the plaintiff's claim.

Question answered in the negative and plaintiff's appeal allowed.

Reported by Lim Lee Na